

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Melodynamic Broadcasting Corporation)	File Number EB-02-DT-397
Radio Station WCER)	NAL/Acct. No. 200332360003
Canton, Ohio)	FRN: 0007-96-0818
)	

FORFEITURE ORDER

Adopted: May 17, 2004

Released: May 19, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eleven thousand dollars (\$11,000) to Melodynamic Broadcasting Corporation (“Melodynamic”), the licensee of Radio Station WCER, Canton, Ohio for willful and repeated violation of Sections 1.89(b), 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3) of the Commission’s Rules (“Rules”).¹ Respectively, the noted violations include failure to respond to Commission communications; failure to maintain a copy of the Emergency Alert System (EAS) handbook; failure to maintain a record of the dates of commencement and termination of power determination by the indirect method; failure to maintain a record of the efficiency factor *F* for each mode of operation; failure to make available the record of the most recent antenna impedance measurements; failure to monitor and establish monitoring procedures and schedules to determine compliance with operating power; failure to operate with power not in excess of 105% of the authorized power; failure to operate at times, or with modes or power, specified and made a part of the license; and failure to maintain a written designation of the chief operator.

II. BACKGROUND

2. On April 6-7, 2000, agents from the Commission’s Detroit District Office (“Detroit Office”) monitored and made field strength measurements of WCER based on complaints that WCER was operating with power in excess of that authorized. On April 7, 2000, the agents conducted an inspection of WCER and found numerous violations of FCC Rules. On June 27, 2000, the Detroit Office issued a Notice of Violation (“NOV”) to Melodynamic for eleven rule violations, and received a July 12, 2000 written response which did not adequately address all the violations. On August 27, 2000, the Detroit Office issued a Continuation of NOV to Melodynamic requesting additional information regarding eight of the eleven items in the NOV, but received no response. On October 30, 2000, the Detroit Office sent a Warning to Melodynamic for failure to respond to the Continuation of NOV, and again received no response.

¹ 47 C.F.R. §§ 1.89 (b), 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3).

3. Following receipt of more complaints indicating that WCER was continuing to operate with power in excess of its authorization, on June 20-21, 2002, agents monitored and made field strength measurements of WCER and, on June 21, 2002, conducted an inspection of WCER. As a result, the agents found thirteen violations of FCC Rules. On July 18, 2002, the Detroit Office issued an NOV to Melodynamic for these thirteen Rule violations, but received no reply. On October 3, 2002, the Detroit Office issued a Warning to Melodynamic for failure to reply to the NOV dated July 18, 2002, but received no reply. The record reveals a history of non-compliance, including repeated violations from prior inspections and nonresponsiveness to Commission notices and warnings. Finally, on December 30, 2002, the Detroit Office released a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Melodynamic in the amount of eleven thousand dollars (\$11,000).² Melodynamic filed two responses following the release of the NAL.

4. In neither response does Melodynamic challenge or address the findings of the NAL, that it willfully and repeatedly violated Sections 1.89(b), 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3) of the Rules. Rather, the first response, dated January 2, 2003, discusses the serious illness of the station manager and generally mentions that he has “questions as to the amount of the non-compliance fine and the amount of revenue the stations are currently generating and expect to generate in the near future.”³ The other letter, received by the Commission on January 24, 2003, mentions the station manager’s physical problems, states that the station engineer does not work there full time and claims that the station is in the process of completing installation of another ground system and is addressing interference and transmitter problems.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining Melodynamic’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332360003 (Enf. Bur., Detroit Office, released December 30, 2002).

³ This letter, written by the manager’s wife, also apologizes for her husband’s unsuccessful attempts to contact the Commission, apparently in response to the October 3, 2002 Warning.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

6. Based on the findings of the *NAL* and Melodynamic's response thereto, we find that Melodynamic's violations of Sections 1.89(b), 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3) of the Rules were willful⁸ and repeated.⁹ We reject any suggestion that the licensee is entitled to mitigation based on general efforts underway at the station to address the noted violations. It is well established that "corrective action taken to come into compliance with Commission rules or policy" is expected, and does not nullify or mitigate any prior forfeitures or violations."¹⁰

7. Melodynamic was directed in Paragraph 17 of the *NAL* to submit financial documentation to "specifically identify the basis" for any requested reduction or cancellation of a forfeiture on the basis of inability to pay. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of ability to pay a forfeiture¹¹ and would not consider forfeiture cancellation or reduction without submission of three years of tax returns or similar financial data. To the extent that the licensee's January 2, 2003 letter suggests that the payment of forfeiture would impose hardship, Melodynamic has failed to substantiate its request. There is no evidence before us that would support cancellation of the forfeiture or a reduction based upon inability to pay.

8. As of the adoption date of this *Order*, Melodynamic has not provided evidence that it has complied with Sections 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3) of the Rules. Based upon the licensee's history of non-compliance and repeated uncorrected violations from prior inspections, we will require, pursuant to Section 308(b) of the Act,¹² that Melodynamic report to the report to the Enforcement Bureau no more than thirty (30) days following the release of this *Order* whether it has come into compliance with Sections 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3) by maintaining a copy of the Emergency Alert System (EAS) handbook; maintaining a record of the dates of commencement and termination of power determination by the indirect method; maintaining a record of the efficiency factor *F* for each mode of operation; making available the record of the most recent antenna impedance measurements; monitoring and establishing monitoring procedures and schedules to determine compliance with operating power; operating with power not in excess of 105% of the authorized power; operating at times, or with modes or power, specified and made a part of the license; and maintaining a written designation of the chief operator. Melodynamic's report must be submitted in the form of an affidavit or declaration, under penalty of

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

¹⁰ *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

¹¹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹² 47 U.S.C. § 308(b).

perjury, signed by an officer or director of the licensee. Melodynamic should note that its continued noncompliance could result in additional enforcement action.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act¹³, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules¹⁴, Melodynamic Broadcasting Corporation, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for its willful and repeated violation of Sections 1.89(b), 11.15, 73.51(d), 73.51(e)(2), 73.1225(d)(1), 73.1350(c)(1), 73.1560(a)(1), 73.1745 and 73.1870(b)(3) of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules¹⁵ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332360003, and FRN: 0007-96-0818 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

11. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Melodynamic must submit the report described in Paragraph 8 above, no more than thirty (30) days following the release of this *Order*, to the Federal Communications Commission, Spectrum Enforcement Division, 445 12th Street, S.W., Room 4-A223, Washington, D.C. 20554, Attention: Emmitt Carlton, Esq.

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, and First Class Mail to Melodynamic Broadcasting Corporation, 4537 22nd Street NW, Canton, Ohio 44708.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.